

REMARKS

Minor corrections have been made to the specification and a Request for Permission to Amend the Drawing Figure has been submitted. Reexamination and reconsideration are respectfully requested.

Initially, Figure 1 was objected to due to the reference character "18" referring to various components in the specification. As such, applicants have clarified the specification to note that the holding shaft could be the "card insert" shown in the Figure. Additionally, the specification and Figure 1 have been amended to illustrate the authorization and verification device in the form of a magnetic card 19, insertable into the holding shaft (card insert) 18. Accordingly, applicants submit the drawing figure is acceptable. In that regard, it should be noted that applicants system and method provide means 16, 18 that are actuated directly or indirectly by the driver and interact with the electronic control unit 20 (page 5, lines 2-5). In a first embodiment, the means 16 is a key button and, in a second embodiment, the means 18 includes the holding shaft for a magnetic card 19 that is part of an authorization and verification device. The user thus inserts the card in the holding device which, indirectly can, for example, signal the ECU to "switch" the automatic parking brake activation feature off.

In the Office Action, the Examiner rejected claims 3-5 under 35 U.S.C. § 112, 2nd paragraph, for allegedly failing to provide antecedent basis for "said means for arbitrarily preventing" in claim 3. Applicants point out, however, that claim 3, along with claims 4 and 5, depend from claim 2 which does recite the

“means for arbitrarily preventing”. Hence, applicants submit antecedent basis is provided.

In the Office Action, claims 1-9 were rejected as being obvious over Nakimoto et al. (U.S. 4,561,527) in view of DE ‘064 (cited in applicants background section)and WO ‘836. Applicants respectfully traverse this rejection.

Applicants invention is directed toward solving a problem in motor vehicles that are startable without a mechanical key, and yet which require automatic activation of a parking brake with a removed key, for example based on the laws in some countries (page 2, paragraph 5). As such, applicants defined an optimal operating mode at which the parking brake is to be activated automatically, that is, upon the shutting off of an internal combustion engine (page 3, paragraph 7).

By contrast, the prior art cited in the Office Action is merely a collection of known systems that, together, fail to suggest the problems solved by applicants invention, let alone suggest a solution. Nakimoto merely describes a conventional motor vehicle using a mechanical key and having an automatically activated parking brake system. As the Examiner notes, Nakimoto “is silent as to whether or not the motor vehicle is startable without a mechanical key and whether or not the operating parameter is specifically the shutting off of an internal combustion of the motor vehicle”. Yet, those “silent” features are paramount in applicants claimed invention, as the first feature gives rise to the problem and the second feature helps solve the problem. Clearly, this reference

does not lead one of skill in the art to design Applicants' electronic control for automatically activating a parking brake in a motor vehicle startable without a mechanical key.

Regarding the secondary DE '064 reference, it merely teaches, as applicants noted in their background section, that vehicles exist that do not have mechanical keys. Even if one skilled in the art were motivated to modify Nakimoto to be usable with a mechanical key, only a hindsight motivation would go several steps further in recognizing that this presents a problem and then attempting to invent a solution to it.

In that regard, WO '836, which is directed toward the automatic control of an automobile transmission, merely as a safety feature when the electronic control unit is malfunctioning, automatically engages a parking brake. No failure of an electronic control unit is discussed in applicants' invention. WO '836 merely activates the parking brake in this emergency mode once the engine is turned off. Here again, it is not at all directed toward the automatic activation of a parking brake in a motor vehicle startable without a mechanical key.

In view of the foregoing, applicant submits a prima facie case of obviousness has not been made. As such, independent claims 1 and 6 are submitted to be patentable over these references. Further, claims 2-5 and 7-9 recite additional features which, when taken in conjunction with the features of the independent claims, are nowhere taught or suggested by this prior art. Hence, those claims are also submitted to be patentable.

For the foregoing reasons, applicant submits claims 1-9 are in condition for allowance.

Regarding the rejection of claims 1-9 under the judicially created doctrine of obviousness-double patenting, applicants submit herewith a terminal disclaimer.

For the foregoing reasons, applicant submits claims 1-9 are now in condition for allowance. An early notice to that effect is solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

It is respectfully requested that, if necessary to effect a timely response, this paper be considered as a Petition for an Extension of Time sufficient to effect a timely response and shortages in other fees, be charged, or any overpayment in fees be credited, to the Deposit Account of Crowell & Moring, L.L.P., Account No. 05-1323 (Docket #951/50213).

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION:

Please amend the specification as follows:

Please replace paragraph [0003] with the following:

[0003] From German patent document DE 196 25 019 A1, for example, an electronic control unit is known in the form of a transmission control device, which in addition to other vehicle functions is used for [the] automatically activating a parking brake in a vehicle. The parking brake is automatically activated independent of at least one specified operating mode of the motor vehicle, which is started with a mechanical ignition key. Such an operating state can include, e.g., falling short of a certain vehicle speed threshold, the position of the ignition key in the lock, and/or the state of the vehicle door (open/closed). At the latest, upon removing the ignition key from the lock, however, the parking brake is activated.

Please replace paragraph [0013] with the following:

[0013] In accordance with a second possibility, based on which the motor vehicle can be started with an electronic authorization verification device with a wireless code transmission [18], the arbitrary prevention of the automatic activation of the parking brake can be triggered by inserting the authorization verification device in a holding shaft 18 provided for this purpose. For example, a switch is indirectly manually actuated when the authorization verification device is inserted in the holding shaft (card insert) 18. Such an authorization

verification device can be a magnetic card 19, for example. A holding shaft that is already provided for another module can be used, for example. In the case of an authorization verification device in accordance with German Patent document DE 198 23 707 A1, the authorization verification device, e.g., in the form of a magnetic card, can be inserted into the shaft of the device to hold additional memory after prior removal. Such an electronic "key", e.g., in the form of a magnetic card, a transponder or additional memory, must, therefore, be stored at a specified location on the vehicle. This function also corresponds to leaving the key in the ignition.